



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,213	09/18/2006	Peter Maxwell Lavell	1006.004	5504
58152 7590 03/30/2010 DEFILLO & ASSOCIATES, INC. P.O. Box 14104 Clearwater, FL 33766				
EXAMINER				
KENNY, DANIEL J				
ART UNIT		PAPER NUMBER		
3633				
MAIL DATE		DELIVERY MODE		
03/30/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/562,213

Applicant(s)

LAVELL, PETER MAXWELL

Examiner

DANIEL KENNY

Art Unit

3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG-08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Species I in the reply filed on 1/22/2010 is acknowledged. The traversal is on the ground(s) that the species have close characteristics and main purposes. This is not found persuasive because the species all of the species have mutually exclusive characteristics. Claims 10, 11, and 18-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to the nonelected species, there being no allowable generic or linking claim.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

Claim 1 is objected to because "and a bottom wall frame member of said frame" should apparently be inserted after the first "cladding" on line 2.

Claim 6 is objected to because "wall skirting member" should apparently be "wall cladding".

Appropriate correction is required.

Title

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Pferschy (6,710,244).

Claim 1 – Pferschy discloses a wall structure for a building (Fig. 2) including:

a gap provided between a bottom edge of an interior wall cladding and a bottom wall frame member of said frame, said wall cladding being carried by a wall frame and a bottom wall frame member of said frame;

whereby lower portions of said wall frame are accessible through said gap;

a wall skirting means (10) adapted to fit along and support said bottom edge of said cladding and to cover said gap;

said wall skirting means including a wall skirting member (10) movable (by unscrewing) away from said wall structure to allow for access to said wall frame through said gap.

Claim 2 – is rejected under 35 U.S.C. 102(b) as being anticipated by Baum (1,585,960).

Baum discloses a wall skirting means (3) capable of being associated with a wall structure of a building (for example, by nailing it to the wall) having an interior wall

cladding carried by a wall frame and in which a gap is provided between a bottom edge of said cladding and a bottom wall frame member of said frame, said wall skirting means being capable of fitting along and supporting (supporting, for example, the cladding laterally) said bottom edge of said wall cladding and covering said gap, said wall skirting means including a wall skirting member movable (by taking the nails out) away from said wall structure to allow for access to said wall frame through said gap. The wall structure is considered intended use language, and as such is given little patentable weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2, and 4-7 – are rejected under 35 U.S.C. 103(a) as being unpatentable over Wakelin (AU200215588) in view of Tashjian (1,611,325).

Wakelin discloses a wall skirting means (Figs. 15-20) adapted to be associated with a wall structure of a building having an interior wall cladding carried by a wall frame and in which a gap is provided between a bottom edge of said cladding and a bottom wall frame member of said frame, said wall skirting means being adapted to fit along and support (horizontally) said bottom edge of said wall cladding and cover said gap, said wall skirting means including a wall skirting member (1) movable away from said wall structure to allow for access to said wall frame through said gap, the wall skirting member secured to a wall structure by magnetic coupling means, and said magnetic coupling means including a magnetic strip (29) affixed to a rearwardly facing surface of said skirting member and a complementary metal strip (25) affixed to an outwardly facing surface of a horizontal frame member of said frame, magnetic attraction between the magnetic strip and metal strip holding said skirting member in place relative to said wall frame.

Tashjian discloses a wall skirting member (Fig. 2) including a rebate or recess in which a lower edge (32) of said wall skirting member is located and thereby supported, and said rebate or recess is provided in an upper inside portion of the said skirting member.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to include the Tashjian-taught recess in Wakelin to provide a more solid wall skirting member by extending the back of the wall skirting member toward the wall structure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL KENNY whose telephone number is (571)272-9951. The examiner can normally be reached on Mon-Fri. 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571) 272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. K./
Examiner, Art Unit 3633

/Jeanette E Chapman/
Primary Examiner, Art Unit 3633